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28 **UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

<p><b>In re:</b></p> <p><b>PG&amp;E CORPORATION</b></p> <p><b>-and-</b></p> <p><b>PACIFIC GAS AND ELECTRIC COMPANY,</b></p> <p><b>Debtors.</b></p>	<p>Bankruptcy Case No. 19 - 30088 (DM)</p> <p>Chapter 11 (Lead Case) (Jointly Administered)</p> <p><b>MOTION AND MEMORANDUM OF FIRST SOLAR, INC., FOR ENTRY OF AN ORDER CONFIRMING SAFE HARBOR PROTECTION UNDER 11 U.S.C. §§ 362(b)(6) AND 556</b></p>
<p><input type="checkbox"/> Affects PG&amp;E Corporation</p> <p><input checked="" type="checkbox"/> Affects Pacific Gas and Electric Company</p> <p><input type="checkbox"/> Affects both Debtors</p> <p><i>* All papers shall be filed in the Lead Case, No. 19-30088 (DM)</i></p>	<p><b>Hearing Date:</b> August 28, 2019 <b>Time:</b> 9:30 a.m. (P.T.)</p> <p>Courtroom: Hon. Dennis Montali 450 Golden Gate A venue 16th Floor, Courtroom 17 San Francisco, CA 94102</p> <p><b>Objections Due:</b> August 21, 2019, 4:00 (P.T.)</p>

## **TABLE OF CONTENTS**

JURISDICTION .....	5
PRELIMINARY STATEMENT .....	6
FACTS .....	6
LEGAL ARGUMENT .....	7
A.    The Forward Contract Test .....	9
B.    The PPA is a Forward Contract .....	11
C.    First Solar and PG&E are both Forward Contract Merchants .....	13
NOTICE .....	15
CONCLUSION .....	15

## **TABLE OF AUTHORITIES**

Page(s)	
2	<b>Cases</b>
4	<i>BCP Liquidating, LLC v. Bridgeline Gas Mktg., LLC (In re Borden Chems. &amp;</i>
5	<i>Plastics Operating L.P.),</i>
6	336 B.R. 214 (Bankr. D. Del. 2006) .....13
7	<i>Calpine Energy Servs., L.P. v. Reliant Energy Elec. Sols., L.L.C. (In re Calpine</i>
8	<i>Corp.),</i>
9	No. 08-1251(BRL), 2009 WL 1578282 (Bankr. S.D.N.Y. May 7, 2009) .....8
10	<i>Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc.,</i>
11	334 F. Supp. 3d 492 (D. Mass. 2018) .....9
12	<i>Conroy v. Andeck Res. '81 Year-End Ltd.,</i>
13	137 Ill. App. 3d 375, 484 N.E.2d 525 (1985) .....9
14	<i>Harris v. County of Orange,</i>
15	682 F.3d 1126 (9th Cir. 2012) .....12
16	<i>In re FirstEnergy Sols. Corp.,</i>
17	596 B.R. 631 (Bankr. N.D. Ohio 2019) .....11
18	<i>In re Mirant Corp.,</i>
19	303 B.R. 319 (Bankr. N.D. Tex. 2003) .....8
20	<i>In re Mirant Corp.</i>
21	310 B.R. 548 (Bankr. N.D. Tex. 2004) .....14, 15
22	<i>In re Nat'l Gas Distributors, LLC,</i>
23	556 F.3d 247 (4th Cir. 2009) .....10
24	<i>Lightfoot v. MXEnergy Elec., Inc. (In re MBS Mgmt. Servs., Inc.),</i>
25	432 B.R. 570 (Bankr. E.D. La. 2010) .....11
26	<i>McKittrick v. Gavilon, LLC (In re Cascade Grain Prod., LLC),</i>
27	465 B.R. 570 (Bankr. D. Or. 2011) .....12
28	<i>Puget Sound Energy, Inc. v. Pac. Gas and Elec. Co. (In re Pac. Gas and Elec. Co.),</i>
29	271 B.R. 626 (N.D. Cal. 2002) .....10, 11
30	<b>Statutes</b>
31	7 U.S.C. § 1a(9) (Commodity Exchange Act) .....9
32	11 U.S.C. § 101(25), (26) ..... <i>passim</i>

1	11 U.S.C. § 105.....	14
2	11 U.S.C. § 362(b)(6) .....	<i>passim</i>
3	11 U.S.C. § 363.....	14
4	11 U.S.C. § 364.....	14
5	11 U.S.C. § 365.....	6, 7
6	11 U.S.C. § 365(e)(l).....	8
7	11 U.S.C. § 556.....	<i>passim</i>
8	11 U.S.C. §§ 761(1), (8) .....	9, 11
9	28 U.S.C. §§ 157.....	5
10	28 U.S.C. § 157(b) .....	5
11	28 U.S.C. § 1334.....	5
12	28 U.S.C. § 1408.....	5
13	28 U.S.C. § 1409.....	5
14	Securities Exchange Act of 1934 § 13 .....	14
15	Securities Exchange Act of 1934 § 15(d) .....	14
16	<b>Other Authorities</b>	
17	Fed. R. Bankr. P. Rule 4001(a)(1) .....	5, 6
18	Fed. R. Bankr. P. Rule 6003 and 6004.....	14
19	Fed. R. Evid. Rule 201.....	12
20		
21		
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First Solar, Inc. (“First Solar”) by and through its undersigned counsel, submits this motion and memorandum of points and authorities (the “Safe Harbor Motion”) for entry of an order confirming that (1) the Power Purchase Agreement (the “PPA”) between Willow Springs Solar 3, LLC (“Willow Springs 3”), a wholly-owned subsidiary of First Solar, on the one hand, and Pacific Gas and Electric Company (“PG&E,” and together with PG&E Corporation, the “Debtors”), on the other hand, is subject to the safe harbor provisions codified in sections 362(b)(6) and 556 of title 11 of the United States Code (the “Bankruptcy Code”) such that (2) the automatic stay does not apply to bar Willow Springs 3 from exercising its contractual rights under the PPA, including its contractual right to cause the liquidation, termination or acceleration of the PPA or to offset or net out any termination value, payment amount or other transfer obligation arising under or in connection with the PPA.

First Solar notes that this motion is substantially similar to the *Motion and Memorandum of Enel Green Power North America for Entry of an Order Confirming Safe Harbor Protection under 11 U.S.C. §§ 362(b)(6) and 556*. [Docket No. 481] and the *Motion and Memorandum of Esvolta, LP for Entry of an Order Confirming Safe Harbor Protection Under 11 U.S.C. §§ 362(b)(6) and 556* [Docket No. 977], which motions requested substantially similar relief. In support of this motion, First Solar respectfully represents the following:

## **JURISDICTION**

21       1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring*  
22 *Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and  
23 5011-l(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District  
24 of California (the “Bankruptcy Local Rules”).

26        2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court  
27 pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for this motion are 11 U.S.C.  
28 §§ 362(b)(6) and 556, Rule 4001(a)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy

Rules”), and Bankruptcy Local Rule 4001-1.

## **PRELIMINARY STATEMENT**

3. First Solar requests an order confirming that the safe harbor protections under sections 362(b)(6) and 556 of the Bankruptcy Code apply to allow Willow Springs 3 to enforce its contractual rights under the PPA, including its right to terminate the PPA.

4. Pursuant to the PPA, Willow Springs 3 has contracted to construct a 75 MW solar facility in Kern County, California (the “Facility”) that will provide power to PG&E. Pursuant to the PPA, Willow Springs 3 posted development security to PG&E in the form of letters of credit.

5. Pursuant to the PPA, Willow Springs 3 has expended substantial amounts and will be required to expend millions of dollars in additional development costs over the next several months to comply with its obligations under the PPA.

6. However, as a result of PG&E’s recent Chapter 11 filing, PG&E may at any time decide that it no longer wants the Facility and may exercise its right under section 365 of the Bankruptcy Code to reject the PPA. As a result, First Solar has no choice but to request that the Court confirm Willow Spring’s contractual right under the Bankruptcy Code safe harbor protections set forth in sections 362(b)(6) and 556 of the Bankruptcy Code to terminate the PPA.

## FACTS

7. First Solar is a Delaware corporation headquartered in Tempe, Arizona and is a leading global provider of comprehensive photovoltaic (“PV”) solar systems which use its advanced module and system technology. First Solar’s subsidiary, Willow Springs 3, is a Delaware limited liability company headquartered in San Francisco, California.

8. PG&E and Willow Springs 3 are parties to the PPA. The PPA generally provides that Willow Springs 3 will construct a 75 megawatt (“MW”) PV facility to sell power to PG&E with an

expected delivery date of January 31, 2021 and an outside delivery date of July 31, 2021.<sup>1</sup>

9. In addition, First Solar and Willow Springs 3 have invested in unrecoverable development expenses for site control and land payments, interconnection studies, permit applications (and related consulting costs including engineering, environmental, entitlements and architecture), plus travel and legal fees. In addition to its investments to date, and the project development security described above, First Solar and Willow Springs 3 face significant near-term cash requirements to continue the development of the Facility in order to maintain the schedule required to ensure that Willow Springs 3 does not trigger an “Event of Default” under the PPA.

10. First Solar and Willow Springs 3 thus now find themselves in a difficult dilemma. First Solar and Willow Springs 3 must expend material sums and devote substantial time and resources to fulfill Willow Springs 3's obligations under the PPA. If Willow Springs 3 fails to comply with the PPA, PG&E can declare an Event of Default and draw on the letters of credit that were posted by Willow Springs 3. But First Solar and Willow Springs 3 cannot continue to expend such funds, time and resources so long as PG&E does not assume the PPA. Unfortunately, given the current stage of the bankruptcy proceedings, PG&E has indicated that it is not currently in a position to assume the PPA pursuant to section 365 of the Bankruptcy Code, and needs more time before making a decision one way or the other.

11. If the Court concludes that the safe harbor provisions apply, Willow Springs 3 will have the option of terminating the PPA due to a default by PG&E under Section 5.1(a)(iv), which provides that the filing of a bankruptcy petition by PG&E is an Event of Default.

## **LEGAL ARGUMENT**

12. The Court should confirm that the PPA is protected by the safe harbor provisions of

<sup>1</sup> The PPA contains confidential and commercially sensitive information, and, accordingly, First Solar has filed concurrently herewith a motion requesting permission to file the PPA under seal.

1 sections 362(b)(6) and 556 of the Bankruptcy Code, and that the automatic stay does not apply to bar  
2 Willow Springs 3 from exercising its contractual rights in the PPA, including, without limitation, the  
3 contractual right to cause the termination of the PPA.

4       13. Section 362(b) of the Bankruptcy Code provides certain exceptions to the automatic  
5 stay provisions contained in section 362(a). Section 362(b)(6) permits the exercise of certain rights by  
6 a forward contract merchant, notwithstanding the existence of the automatic stay, upon the exercise of  
7 a contractual right to terminate a contract under section 556 of the Bankruptcy Code. Section 556 of  
8 the Bankruptcy Code provides, in relevant part:

9                 The contractual right of a . . . forward contract merchant to cause the liquidation,  
10 termination, or acceleration of a . . . forward contract because of a condition of  
11 the kind specified in section 365(e)(1) of this title . . . shall not be stayed,  
12 avoided or otherwise limited by operation of any provision of this title or by the  
13 order of a court in any proceeding under this title.

14       11 U.S.C. § 556

15       14. Section 556 of the Bankruptcy Code further defines the contractual rights that may be  
16 enforced under this safe harbor exception to the automatic stay, specifically allowing a forward  
17 contract merchant to enforce its contractual right to “liquidate, terminate, or accelerate” a forward  
18 contract with the debtor according to the provisions in the contract that allow termination, liquidation,  
19 or acceleration based on (i) the counterparty becoming insolvent or (ii) the counterparty filing for  
20 bankruptcy under Chapter 11. *See* 11 U.S.C. §§ 556, 365(e)(1); *see also Calpine Energy Servs., L.P.*  
21 *v. Reliant Energy Elec. Sols., L.L.C. (In re Calpine Corp.)*, No. 08-1251(BRL), 2009 WL 1578282, at  
22 \*7 (Bankr. S.D.N.Y. May 7, 2009) (holding that section 556, by its terms, limits its reach to those  
23 clauses that trigger termination upon the occurrence of a condition specified in bankruptcy section  
24 365(e)(1)).

25       15. If a party can demonstrate that the Bankruptcy Code’s safe harbor protections apply, a  
26 party may terminate a contract pursuant to an *ipso facto* clause. *See, e.g., In re Mirant Corp.*, 303 B.R.  
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1 319, 327 (Bankr. N.D. Tex. 2003) (holding that even if a contract contains a valid *ipso facto* clause,  
2 the automatic stay still applies to prevent unilateral termination of the contract, and the counterparty  
3 must seek court's approval to modify the stay before the *ipso facto* clause may be invoked). A party  
4 seeking to establish its qualification for the forward contract safe harbor is required to show that (i) the  
5 contract satisfies the requirements of a "forward contract," and (ii) a party to the contract falls under  
6 the definition of a "forward contract merchant" under the Bankruptcy Code. *See Clear Peak Energy,*  
7 *Inc. v. S. Cal. Edison Co. (In re Clear Peak Energy, Inc.),* 488 B.R. 647, 661 (Bankr. D. Ariz. 2013).

8

9       **A.     The Forward Contract Test**

10       16.    Section 101 (25) of the Bankruptcy Code defines a "forward contract" as a contract for  
11 the purchase, sale, or transfer of a commodity (as defined in Bankruptcy Code section 761(8)) or any  
12 similar good, service, article, right, or interest, which is presently or in the future becomes the subject  
13 of dealing in the forward contract trade, with a maturity date more than two days after the date the  
14 contract is entered into, including a repurchase or reverse repurchase transaction, consignment, lease,  
15 swap, hedge transaction, deposit, loan, option or any other similar agreement. *See* 11 U.S.C. §  
16 101(25).

17       17.    Section 761(8) of the Bankruptcy Code adopts the definition of "commodity" found in  
18 the Commodity Exchange Act ("CEA"). *See* 11 U.S.C. §§ 761(1), (8). Section 1a(9) of the CEA  
19 defines "commodity" to include "all services, rights, and interests ... in which contracts for future  
20 delivery are presently or in the future dealt in." *See* 7 U.S.C. § 1a(9). The term "commodity" is  
21 expansive, and the 1974 amendments to the CEA further enlarged the term to cover non-traditional  
22 goods and services. *See Conroy v. Andeck Res. '81 Year-End Ltd.*, 137 Ill. App. 3d 375, 380, 484  
23 N.E.2d 525, 530 (1985); *see also Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc.*, 334  
24 F. Supp. 3d 492, 497 (D. Mass. 2018) (noting that Congress sought an expansive definition of  
25 commodity in the CEA).

1       18. In affirming a ruling of this Court, the District Court has held that electricity is a  
2 commodity. *Puget Sound Energy, Inc. v. Pac. Gas and Elec. Co. (In re Pac. Gas and Elec. Co.)*, 271  
3 B.R. 626, 639 (N.D. Cal. 2002) (“Electricity is a commodity which, like other goods, can be  
4 manufactured, transported and sold.”) (*quoting Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208  
5 Cal.App.2d 803, 819, 25 Cal.Rptr. 798 (Cal.Ct. App. 1962)).  
6

7       19. Relatively few cases in the Ninth Circuit have addressed the issue of whether a contract  
8 qualifies as a forward contract for the purposes of the safe harbor provisions. In the primary decision  
9 on point within the Ninth Circuit, the Bankruptcy Court for the District of Arizona determined that a  
10 renewable power purchase and sales agreement between a utility and a chapter 11 debtor qualified as  
11 a forward contract. *See Clear Peak*, 488 B.R. at 663. In *Clear Peak*, the Bankruptcy Court adopted a  
12 test from *In re Nat'l Gas Distributors, LLC*, 556 F.3d 247 (4th Cir. 2009), and looked at four factors  
13 in its determination, namely whether: (i) the subject of the contract was a commodity, with  
14 substantially all costs of performance attributable to the costs of the underlying commodity; (ii) the  
15 contract had a maturity date more than two days after the contracting date; (iii) the quantity and time  
16 elements were fixed at the time of contracting; and (iv) the contract had a relationship to the financial  
17 markets. *Clear Peak* at 657. Applying these four factors, the court in *Clear Peak* found that the  
18 utility’s power purchase agreement qualified as a forward contract for purpose of the safe harbor  
19 provisions. The court disposed of the first three factors easily, finding that the subject of the  
20 agreement, namely, electricity, was a commodity, the timeline manifested a maturity date more than  
21 two days after the execution date, and the contract specified a minimum amount of power to be  
22 supplied over a specific period of time.  
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25       20. On the fourth factor, the *Clear Peak* court found that a substantial relationship to the  
26 financial market existed where the principal purpose of the power purchase agreement was to hedge  
27 the price the utility was required to pay over the long term. *Id.*  
28

1           **B. The PPA is a Forward Contract**

2       21. The PPA qualifies as a forward contract. The PPA expressly acknowledges that it is a  
3 forward contract within the meaning of the Bankruptcy Code and provides in relevant part that:

4           The Parties acknowledge and agree that this Agreement is a “forward contract” (within  
5 the meaning of the Bankruptcy Code, as in effect as of the Execution Date).

6 PPA §10.13.

7       22. Where parties agree that a contract is a forward contract, a court should not rewrite that  
8 agreement to say otherwise. *See e.g. In re Clear Peak Energy*, 488 B.R. at 647. The court in *Clear*  
9 *Peak* rejected debtor’s argument that it had been coerced into the acknowledgement that it was a  
10 forward contract merchant, and held (a) that the Debtor could have requested that the provision be  
11 stricken or reworded; and (b) that the terms and conditions of the contract should control unless there  
12 is a legal basis to relieve the party of its contractual duties. *Id.* at 661. The court in *Clear Peak* relied  
13 on *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 885 (9th Cir. 2012) (holding that courts should  
14 give effect to freely made contractual agreements), and *Kipperman v. Sutherland (In re Bush)*, 356  
15 B.R. 28, 34 (Bankr. S.D. Cal. 2006) (holding that under California law, if contract language is clear  
16 and explicit, it governs).

17       23. In addition, the PPA qualifies as a forward contract under the *Clear Peak* test. The  
18 subject of the PPA is electricity, which is a commodity for purposes of section 761(8) of the  
19 Bankruptcy Code. Numerous other courts have held electricity to be a “commodity” for forward  
20 contract purposes. *See, e.g. In re Pac. Gas and Elec. Co.*, 271 B.R. at 640 (“Simply put, electricity in  
21 this instance is a thing movable at the time of identification to the contract for sale. That is clearly  
22 demonstrated by the fact that the Agreement calls for the shipment of specific quantities of  
23 electricity.”); *see also Lightfoot v. MXEnergy Elec., Inc. (In re MBS Mgmt. Servs., Inc.)*, 432 B.R. 570,  
24 574 (Bankr. E.D. La. 2010) (holding that contract which required company to “supply the full  
25 requirements” of electricity to debtor was a “forward contract,” where the contract involved the sale  
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1 of electricity, a commodity); *see also In re FirstEnergy Sols. Corp.*, 596 B.R. 631, 635 (Bankr. N.D.  
2 Ohio 2019) (in which both parties specifically stipulated that electricity is a commodity under the  
3 Bankruptcy Code, and the bankruptcy court agreed). Thus, the first prong of the test is satisfied.  
4

5       24. The PPA also satisfies the second and third prongs of *Clear Peak*. The PPA provides  
6 for the delivery of 75 MW of electricity for a period of fifteen (15) years from the date of completion  
7 of the Facility. *See PPA Cover Sheet p. 1. See Clear Peak*, 488 B.R. at 658-659 (finding that the  
8 fixed quantity requirement is satisfied so long as the contract anticipates the generation of a minimum  
9 quantity of power over a specific period of time). Ninth Circuit case law holds that “maturity date” as  
10 used in the definition of forward contract “means the future date at which the commodity must be  
11 bought or sold”. *See McKittrick v. Gavilon, LLC (In re Cascade Grain Prod., LLC)*, 465 B.R. 570,  
12 575 (Bankr. D. Or. 2011). Additionally, the price is set, as payment is made over the fifteen years of  
13 the contract term using a fixed price per MW hour. *See PPA Cover Sheet p. 3.*  
14

15       25. The PPA also satisfies the fourth factor, in that the PPA has a relationship to the  
16 financial markets. This PPA required approval by the CPUC, and the primary factor in obtaining  
17 regulatory approval is that the PPA provides reasonable terms and conditions, including price. As was  
18 the case in *Clear Peak*, PG&E has created a complex network of supply and capacity agreements to  
19 continuously provide power to its customers at stable rates. *See PG&E Corp. and Pacific Gas and*  
20 *Electric Co., Annual Report (form 10-K), at 129 (Feb. 28, 2019) (noting PG&E’s use of derivative*  
21 *contracts such as power purchase agreements to manage volatility in customer rates).*<sup>2</sup> The PPA was  
22 executed as an essential component of that hedging network to ensure availability of renewable  
23 electricity at fixed prices.  
24

25       26. Therefore, the PPA has a substantial connection to the financial markets and satisfies  
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<sup>2</sup> *See Harris v. County of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (“We may take judicial notice of undisputed  
matters of public record”) (citations omitted); Fed. R. Evid. 201.

1 the fourth prong of the forward contract test. In addition, the PPA contains a provision where the  
2 parties to the PPA represent that “it is a ‘forward contract merchant’ within the meaning of the United  
3 States Bankruptcy Code (as in effect as of the Execution Date of this Agreement)” and a provision  
4 where the “[t]he Parties acknowledge and agree that this Agreement is a ‘forward contract’ (within the  
5 meaning of the Bankruptcy Code, as in effect as of the Execution Date).” PPA §§ 10.2(a)(iii), 10.13.

6  
7 27. For all of the foregoing reasons, the PPA satisfies each of the four factors of the forward  
8 contract test identified by the court in *Clear Peak*, and qualifies for protection under sections 362(b)(6)  
9 and 556 of the Bankruptcy Code so as to avoid a negative impact on the financial markets due to the  
10 imposition of the automatic stay.

11       **C. First Solar and PG&E are both Forward Contract Merchants**

12 28. Section 101(26) of the Bankruptcy Code defines a forward contract merchant as an  
13 entity in the business of entering into forward contracts as a merchant (or with a merchant) in a  
14 commodity or any similar good, article, service, right, or interest which is presently or in the future  
15 becomes the subject of dealing in the forward contract trade. *See BCP Liquidating, LLC v. Bridgeline*  
16 *Gas Mktg., LLC (In re Borden Chems. & Plastics Operating L.P.)*, 336 B.R. 214, 225-226 (Bankr. D.  
17 Del. 2006) (noting that an entity can qualify as a forward contract merchant for purposes of the safe  
18 harbor even if its business is only partially comprised of entering into forward contracts in a  
19 commodity); *Clear Peak*, 488 B.R. at 661 (*citing In re Borden*, 336 B.R. at 225 and 5 *Collier on*  
20 *Bankruptcy* § 556.03(2) at 556-6 (15th ed. Rev. 2001)).

21 29. In *Clear Peak*, the court found that the utility qualified as a forward contact merchant  
22 because it entered into contracts with short- and long-term maturity dates for the future delivery of  
23 electricity for hedging purposes. *Clear Peak*, 488 B.R. at 661. The *Clear Peak* court reasoned that  
24 the language of section 101(26) requires only one party to the contract to be a merchant, and that only  
25 contracts to which neither counterparty is a merchant would fail to satisfy the statutory requirement in  
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1 the definition of a forward contract merchant. *Id.* Finding that the utility qualified as a forward contract  
2 merchant, the *Clear Peak* court held this factor under the section 362(b)(6) safe harbor satisfied. *Id.*  
3 at 663; *In re Mirant Corp.* 310 B.R. 548, 570 (Bankr. N.D. Tex. 2004) (finding that a forward contract  
4 merchant is a person that, in order to make a profit, engages in the forward contract trade as a merchant  
5 or with merchants).

7       30. Here, the PPA contains a provision where each party to the PPA expressly represents  
8 and warrants that “it is a “forward contract merchant” within the meaning of the United States  
9 Bankruptcy Code (as in effect as of the Execution Date of this Agreement).” PPA §10.2(a)(iii). In  
10 addition, First Solar meets the *Mirant* definition of a forward contract merchant because it entered into  
11 the PPA for the purpose of making a profit. Moreover, First Solar (and its subsidiaries, including  
12 Willow Springs 3) is a global designer, manufacturer, and seller of PV power systems with \$2.5 billion  
13 in annual revenue for 2018. *See Annual Report of First Solar, Inc. Pursuant to Section 13 or 15(d) of*  
14 *the Securities Exchange Act of 1934.* Therefore, First Solar fits squarely within both the statutory  
15 definition of a “forward contract merchant” under section 101(26) and *Mirant*’s test that a forward  
16 contract merchant engage in the forward contract trade as a merchant or with merchants, in order to  
17 generate a profit.

19       31. Bankruptcy Code section 101(26) only requires that one party to the contract be  
20 designated as a forward contract merchant and PG&E is indisputably a forward contract merchant. *See*  
21 *Clear Peak*, 488 B.R. at 661 (concluding that because at least one of the parties to the PPA is clearly  
22 a Forward Contract Merchant, the requirement under Bankruptcy Code section 362(b)(6) had been  
23 met and the safe harbor applied); *see also Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363, and*  
24 *364 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Debtors to (A) Honor Prepetition Obligations*  
25 *to Natural Gas and Electricity Exchange Operators, (B) Grant Administrative Expense Claims and*  
26 *Authorize Posting of Collateral to Exchange Operators, Trading Counterparties, and Future*  
27 *Case: 19-30088 Doc# 3194 Filed: 07/25/19 Entered: 07/25/19 13:24:33 Page 14*  
28

*Commission Merchants, (C) Modify the Automatic Stay, and (D) Grant Related Relief*, dated February 27, 2019 [Docket No. 696].

32. Just as the *Clear Peak* court found the utility to be a forward contract merchant for safe harbor purposes, PG&E is also a utility company that is in the business of entering into forward contracts to hedge against price fluctuations in the energy market, and fits the statutory definition of a forward contract merchant under section 101(26) and the *Mirant* test.

33. Because (i) the PPA is a forward contract, and (ii) First Solar and PG&E are forward contract merchants, First Solar respectfully requests that the Safe Harbor Motion be granted and the Court enter an order in the form attached hereto that finds the PPA is protected by the safe harbor provisions codified in sections 362(b)(6) and 556 of the Bankruptcy Code and determine that the automatic stay does not apply to the PPA or to Willow Springs 3 as counterparty to the PPA.

## NOTICE

Notice of this motion is being provided in accordance with the *Second Amended Order Implementing Certain Notice and Case Management Procedures*, entered on May 14, 2019 [Docket No. 1996].

## CONCLUSION

For the foregoing reasons, the Court should issue an order confirming that the PPA is protected by the safe harbor provisions codified in sections 362(b)(6) and 556 of the Bankruptcy Code and that the automatic stay does not apply to prevent Willow Springs 3 from exercising its rights under the PPA and for such other and further relief as the Court may deem just and appropriate.

Dated: July 25, 2019

WINSTON & STRAWN LLP

By: /s/ Jennifer Machlin Cecil

Jennifer Machlin Cecil (SBN#294806)  
David Neier (*admitted pro hac vice*)

*Attorneys for First Solar, Inc.  
and Willow Springs Solar 3, LLC*

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4                   **Exhibit A**

5                   **Proposed Order**

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*Attorneys for First Solar, Inc.  
and Willow Springs Solar 3, LLC*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

<p><b>In re:</b></p> <p><b>PG&amp;E CORPORATION</b></p> <p style="text-align: center;"><b>-and-</b></p> <p><b>PACIFIC GAS AND ELECTRIC COMPANY,</b></p> <p style="text-align: center;"><b>Debtors.</b></p>	<p>Bankruptcy Case No. 19 - 30088 (DM)</p> <p>Chapter 11 (Lead Case) (Jointly Administered)</p> <p><b>[PROPOSED] ORDER CONFIRMING SAFE HARBOR PROTECTION PURSUANT TO 11 U.S.C. §§ 362(b)(6) AND 556</b></p>
<p><input type="checkbox"/> Affects PG&amp;E Corporation</p> <p><input checked="" type="checkbox"/> Affects Pacific Gas and Electric Company</p> <p><input type="checkbox"/> Affects both Debtors</p>	<p><b>Hearing Date:</b> August 28, 2019 <b>Time:</b> 9:30 a.m. (P.T.)</p> <p>Courtroom: Hon. Dennis Montali 450 Golden Gate A venue 16th Floor, Courtroom 17 San Francisco, CA 94102</p>
<p><i>* All papers shall be filed in the Lead Case, No. 19-30088 (DM)</i></p>	<p><b>Objections Due: August 21, 2019, 4:00 (P.T.)</b></p>

Upon the motion of First Solar, Inc. (“First Solar”), for Entry of an Order Confirming Safe Harbor Protection Under 11 U.S.C. §§ 362(b)(6) and 556 (the “Safe Harbor Motion”);<sup>1</sup> and this Court having jurisdiction to consider the Safe Harbor Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.) and Bankruptcy Local Rule 5011-1(a); and consideration of the Safe Harbor Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that notice of the Safe Harbor Motion as provided to the parties listed therein is reasonable and sufficient under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Safe Harbor Motion; and this Court having determined that First Solar is a forward contract merchant and the PPA is a forward contract, as required under 11 U.S.C. §§ 362(b)(6) and 556 and that the forward contract safe harbor protection applies to the PPA exempting it from imposition of the automatic stay; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Safe Harbor Motion is granted.

2. Willow Springs 3 is hereby authorized, but not directed, to exercise any of its contractual rights at any time pursuant to, in connection with and in accordance with the PPA and 11 U.S.C. § 556.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**\*\*END OF ORDER\*\***

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Safe Harbor Motion.

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The PPA [redacted in full]